

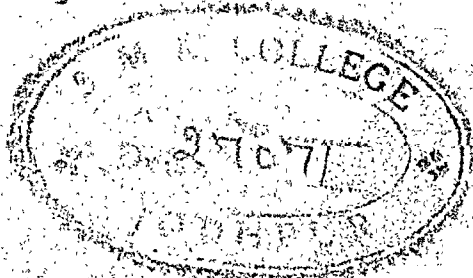
THE GOVERNMENT AND POLITICS OF CHINA

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WITH A CHAPTER ON
"Justice in Modern China"

by Hon'ble Mr. Justice C. B. Agarwala
of the High Court of Judicature at Allahabad



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PREFACE

A visitor to Modern China is bound to be impressed by certain outstanding features of that country's life. The political system and philosophy of China, the rapid rate of her economic progress and the conformity of the human behaviour *en masse* with the attitudes and exertions necessary for the fulfilment of planned progress, are particularly striking. In fact, they not merely impress a visitor but also those who think and try to know something about China from a distance.

I was also greatly impressed by these features when I visited China in the autumn of 1955. But the attitude of mind that I tried to maintain during my stay in that country was, in so far as possible, strictly factual. I made an endeavour to ascertain facts as they met the eye after verification and to analyse the underlying forces which were instrumental in shaping the exterior. I refrained, as far as humanly possible, from mixing up basic data with value-judgements on what I saw and gathered, for collection of basic facts is a condition precedent to forming opinions. A correct and true understanding of surface factors and their meanings and of the forces that underlie them is not possible

without entering into the emotional urges of the people under study and without adequately appreciating their history, problems and aspirations. A too hasty judgement in this sphere, though not uncommon, may prove to be a dangerous pastime.

The present book discusses the political organization of China, which has been a subject of a great deal of interest and speculation, and also often a target of serious and even violent criticism. The task should, therefore, be a daring liberty for anyone so little qualified for it as myself. But since I was not a student of political science, my weakness appeared to be my strength as I was in the advantageous position of being a factual observer whose vision was not clouded by doctrinaire views and convictions. That has emboldened me to send these pages to print.

Whatever may be the shortcomings of this small book, I do hope that it would help, even though to a small degree, in giving a reliably correct idea about China's political structure and government. It is based on personal discussions, on-the-spot observations, and an impartial study of basic data; and has been written in the spirit of understanding China. It is not meant to be an appreciation or condemnation of the Chinese political organization,

PREFACE

but is merely its objective account meant to familiarise the reader with the facts of China's political life. To agree or disagree, to praise or condemn, is a matter of choice in a democratic society ; but to carefully understand basic facts is a duty of social scientists.

I may be permitted to add that my over-all impression is that the political system of China does not perhaps fall too rigidly in any particular doctrinaire pattern, though it has been very much influenced by the political philosophy of and practices in the Soviet Union. Still it is a product of circumstances and has been greatly impressed by the Chinese genius and temperament and also by the highly open-minded and flexible attitude of China's leaders.

I owe a debt of gratitude of Professor A. B. Lal, Head of Politics Department, Allahabad University, who very kindly read the Mss ; and though his great courtesy did not let him point out even the major blemishes, perhaps the book does not contain as many blunders as might have pierced his politeness ! The Honble Mr. Justice C. B. Agarwala of the High Court of Judicature at Allahabad has very kindly contributed the last Chapter of this book, entitled "Justice in Modern China", and I am in

heavy debt to him for his kindness. I am also thankful to Shri Madan Gopal Gupta, President of the International Political Club, Allahabad University, who invited me to read a paper on "Freedoms and Duties in China" to the members of his Club, and allowed me to incorporate it in this book.

It is necessary to mention that the mistakes and lapses that might be found in this book are only my responsibility. But if, in spite of them, the book can help in a correct understanding of China's political structure, my labour will be amply reward.

*The University,
Allahabad.*

A. N. Agarwala

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THE CHARACTER OF STATE IN PEOPLE'S REPUBLIC OF CHINA

The political system of China has been established in accordance with the Constitution of the People's Republic of China, which was passed by the National People's Congress on September 20, 1954. This Constitution is a simple, brief, straightforward and businesslike document containing only 106 articles. It is written in easy, spoken language and is, in that respect, a break from tradition, and possesses the merit of being easily understood by the masses of people. It has been based on the practical experience of the working of the political system in China during the period 1949-1954 when the principles now embodied in the said Constitution were practically applied; and since they have stood the test of practical application, people in China are confident that they would serve them well in future also.

The drafting, re-drafting and adoption of the Chinese Constitution was quick work. It took only eight months and a week. In 1949 a *Common Programme* had certainly been adopted by the

Chinese People's Political Consultative Conference, which was a sort of Provisional Constitution, but the work of drafting the Constitution really commenced on January 13, 1953, when the Central People's Government Council appointed a Committee for the Drafting of the Constitution, which was headed by Mao Tse-tung. In March 1954, the Drafting Committee accepted the first draft submitted by the Central Committee of the Communist Party of China. The first draft was discussed widely by other political parties. Many forums were held by various democratic parties and people's organisations, and it is estimated in China that about 8,000 persons took part in discussions. This led to the second draft of the Constitution which was made public on June 14, 1954. The second draft was again discussed, this time on a wider and popular level; and peasants, workers, artisans and other persons—whose number is estimated at 1.5 million—freely examined and discussed the proposed changes and provisions for about two months. The Committee for Drafting the Constitution then hammered out a third draft taking into account the points made in the discussions that were held. The Central People's Government Council examined this third draft and adopted it at its 34th meeting on September 9,

1954. It was adopted by the National People's Congress of the People's Republic of China at its first session on September 20, 1954, *i.e.*, five days after the formation of the National People's Congress.

It should be noted that the Chinese Constitution now in force is not contemplated to be a final decision on the form of government that China would ultimately adopt. China is developing at a very fast rate and all her institutions and organizations are at present in a state of flux. Experiments are being made and things are being rapidly revised, amended and changed in the light of these experiments. For instance, formerly the duration of class lectures in Peking University was 30 minutes; now it is 90 minutes. Industrial output during the period of the First Five-Year Plan would rise by 100%, agricultural output by 23%, and agricultural and industrial output combined by 51.5%; and economic progress of this order in an hitherto under-developed economy can take place only with a complete shake-up and overhaul of old scales of values and old order of things. In such a highly dynamic climate, things cannot be expected to take any rigid or final shape. But the direction of change has to be fixed; and this is what the Chinese Constitution has done for the period of transition.

The ultimate goal of the Chinese people and government is to establish a full-fledged socialist economy ; but this cannot and should not, be attempted by one stroke of pen, though at the same time it cannot be allowed to linger on indefinitely. China has fixed 20 years as the period of transition. This Constitution is, therefore, meant to serve the people of China for the duration of four five year plans only, in other words, China would forge another Constitution in or about 1972.

The Preamble to the Constitution states that the period from the founding of the People's Republic of China to the attainment of socialist society is one of transition. The state shall, during the transition, eliminate exploitation step by step, by means of socialist transformation of agriculture, handicrafts, industry and commerce.

This leads us to another important feature of the Chinese Constitution. It not only defines powers, duties, and rights of individuals and bodies but it also lays down the economic programme that the country has to follow in the period of transition during which the existing economy would be transformed into a socialist economy. The broad base of the Constitution has given to the people of China a large area of commonly agreed policies, so that they have become a very united people not only

in fundamental aims but also in a programme of work for the fulfilment of which they are all striving in a firm and determined manner.

The pattern of the Chinese Constitution follows *broadly* the constitution of the Soviet Union or other People's Democracies. The National People's Congress of China has its counterpart in the Soviet Union in the shape of Supreme Soviet ; and likewise the Standing Committee in China is the same thing as Presidium of the Supreme Soviet. But there is no counterpart in the Soviet Union of the Chairman of the People's Republic of China ; and China's democratic united front in the shape of Chinese People's Political Consultative Conference is also a new thing.¹

Character of State in China

Article I of the Constitution of People's Republic of China lays down that—

The People's Republic of China is a people's democratic state led by the working class and based on the alliance of workers and peasants.

Working class provides the leadership in China today. It is this leadership which won the credit

¹ Chou Keng-sheng, *Constitution for 600 Million*, "China Reconstructs", Peking, September-October, 1954, p. 4.

of liberating China from "imperialism, feudalism and bureaucrat-capitalism". Today this leadership has again shown unusual talent in the construction and development of China. Hence the working class leadership is to be consolidated and strengthened so that it undertakes the task of socialist construction and socialist transformation vigorously and successfully.

The workers have entered into an alliance with the peasants. They did so during the period the revolution; and they have done so now in the period of national construction. Peasants constitute 80% of total population of China; and worker-peasant alliance means the unity of the vast majority of citizens. It is advantageous to peasants because it is expected to take them up from the stage of precarious living of individual farming to steadily improving living of co-operative or socialist farming. The worker-peasant alliance is a basic condition of the effective leadership of the working class.

The working class has also united with handicraftsmen and other non-agricultural workers in rural areas who live entirely or mainly on their own labour.

Intellectuals are not regarded as an independent social class in China because they come from

different social classes; and consequently they have to align themselves with some social class. If they align themselves with the bourgeoisie, they become bourgeois intellectuals; if they go with feudal landlords and bureaucrat capitalists, they become reactionary intellectuals; and if they align themselves with working class, they become working class intellectuals. Working class in China has rallied the intellectuals; and has been trying, to borrow the prevailing expression, to help them in remoulding their ideology, so that they might help in socialist construction. It must be said to the credit of the Chinese leadership that it does not believe in neglecting, condemning or antagonising the intellectual class. As a matter of fact, Mao Tse-tung once observed that "all intellectuals who have distinguished themselves in the service of the people must be respected as valuable assets to the state and society". The working class leadership treats them with respect and does not compel them but helps them in broadening their outlook and is extremely tolerant of what might appear to be their "shortcomings".

Other classes of population, including national minorities have, also been befriended by the working class.

China still has national bourgeoisie or capitalists

II

PROGRAMME FOR TRANSITION TO A SOCIALIST SOCIETY

The Constitution of the People's Republic of China defines the general objective of building a socialist society and also lays down the concrete steps to be taken with a view to transform the existing society to a socialist society. Article 4 of the Constitution makes "gradual abolition of systems of exploitation and the building of a socialist society" the principal aim during the period of transition. The state allows the following four forms of ownership of means of production, that is to say, there are four kinds of economic sectors :

- (a) State ownership (*i.e.*, ownership by the whole people) ;
- (b) Co-operative ownership (*i.e.*, collective ownership by working masses) ;
- (c) Ownership by individual working people; and
- (d) Capitalist ownership.

The policy of the state is to strengthen and extend the first two categories of ownership, and

to bring about step by step the socialist transformation of the latter two categories. The specific policy being pursued in China today in respect of each of them and which is contained in the Constitution is discussed below :

(a) *State ownership* (i.e., the public sector) is the leading force in national economy and the material basis on which the state carries out socialist transformation. The state ensures priority for the development of the state sector of the economy.¹

(b) *Co-operative Ownership*. The state encourages, guides and helps the development of the co-operative sector of the economy.² At present there is partial collective ownership in many co-operative societies because instruments of production are not fully collectivised; and the future policy of the state is to achieve wholly collective ownership.

(c) *Ownership by Individual Working People*. In this class falls the ownership of peasants and handicraftsmen; and with reference to it the following policy is being pursued: (i) The state protects the right of peasants to own land.³ (ii) The state restricts and gradually eliminates the rich peasant economy.⁴

1 *Constitution*, Article 6.

2 *Ibid*, Article 7.

3 *Ibid*, Article 8.

4 *Ibid*, Article 9.

(iii) The state protects right of handicraftsmen and other non-agricultural individual working people to own means of production.⁵ It encourages them to increase production, improve enterprise and organize producers', as also supply and marketing, co-operative societies. The latter process would gradually convert this sector to fully socialist organization.

(d) As regards *capitalist ownership*, "the state protects the right of capitalists to own means of production and other capital according to law."⁶ The policy of the state is to use, restrict and transform them. The state makes use of the positive sides of capitalist industry and commerce which are beneficial to national welfare; restricts their negative sides which are not beneficial to national welfare; and guides their transformation into various forms of state-capitalist economy, eventually replacing them by state ownership.

The term *State Capitalism* is used in China not in the same sense in which it is generally used

⁵ *Ibid*, Article 10.

⁶ The reason why China has not expropriated national bourgeoisie is that an alliance between them and the working class was formed during revolution and it is continuing after liberation. Moreover, capital ownership in China is very limited as the public sector in that country is dominant. Hence the policy adopted towards capitalist ownership is one of peaceful and gradual transformation to socialist ownership.

elsewhere. By State Capitalism is meant capitalist ownership which is so restricted that it cannot pursue profit motive with impunity disregarding social welfare. As Lenin once observed, State Capitalism is capitalism which is restricted and the limits of which are fixed.⁷

Feudal landlords and bureaucrat-capitalists have been deprived of their ownership, as also of political rights for a specific period; but at the same time the state provides them with a way to reform through work and become citizens who earn their living by their own labour.⁸

Whereas the state directs the transformation of the national economy, it at the same time directs its growth by economic planning. The Constitution of the People's Republic of China says that by economic planning, the state brings about the constant increase of productive forces, and in this way enriches the material and cultural life of the people and consolidates the independence and security of the country.⁹

It should further be noted that work is a matter of honour for every citizen of the People's Republic

7 *Constitution*, Article 19.

8 *Ibid*, Article 15.

9 *Ibid*, Article 16.

of China who is able to work.¹⁰ The state protects the right of citizens to own lawfully earned incomes, savings, houses and other means of life.¹¹ It also protects the right of citizens to inherit private property according to law.¹² The state forbids any person to use his private property to the detriment of public interest.

¹⁰ *Ibid*, Article 11.

¹¹ *Ibid*, Article 12.

¹² *Ibid*, Article 14.

III

THE NATIONAL PEOPLE'S CONGRESS

Chapter II of the Constitution of the People's Republic of China, dealing with the state structure, has 64 Articles (Articles 21-84) out of a total of 106 Articles. It sets out the order of the various organs of state and administrative authority, their organization, functions and inter-relations. It is clear from this Chapter that China firmly believes in a system of people's congresses. The authority of the state is exercised by—

- (a) National People's Congress, and
- (b) Local People's Congresses.

The former is the highest and central organ for the whole country, and the latter are formed for every political sub-division of China. The government of the country is formed by State Council and Local Councils which work under the supervision of people's congresses as will be described later.

§ 1. NATIONAL PEOPLE'S CONGRESS

National People's Congress is the highest and central organ of state authority in China; and it is through this organ that people fundamentally

exercise their power. It is the only legislative authority for the whole country: no other authority can make laws in China. Every organ of administrative authority, people's court and people's procuratorate performs its duty in accordance with the Constitution and the laws enacted by the National People's Congress.¹ It is composed of the deputies elected by—

- (a) provinces,
- (b) autonomous regions,
- (c) municipalities directly under central authority,
- (d) armed forces, and
- (e) Chinese resident abroad.²

The term of the National People's Congress is four years. Fresh elections must be completed two months before the term of office of the National People's Congress expires; and this is the responsibility of the Standing Committee.³ The Standing Committee must convene the National Congress once a year, as also when it deems necessary or when 1/5 th of the deputies so propose.⁴

¹ Yen Ching-yao, *How China is Governed*, "People's China", Peking, January 1, 1955, p. 11.

² *Constitution*, Article 25.

³ *Ibid*, Article 24.

⁴ *Ibid*, Article 25.

Functions of the National People's Congress

The National People's Congress enjoys unlimited and illimitable authority. Its functions⁵ can be divided into (a) General or Policy Functions, and (b) Procedural Functions.

(a) *General or Policy Functions.* The general or policy functions of the National People's Congress are as follows:

1. To amend *constitution*⁶,
2. To enact *laws*⁷,
3. To decide on the national *economic plans*,
4. To approve the state *budget* and financial report,
5. To ratify *boundaries* of provinces, etc., and
6. To decide on questions of *war and peace*.

In other words, on all important matters in the life of the nation, the final decision is of the National People's Congress.

(b) *Procedural Functions.* The National People's Congress has other functions as well which can be roundly described as Procedural Functions. It elects or decides on the choice of leading personnel.

5 *Ibid*, Article 27.

6 This requires 2/3rds majority vote of all deputies.

7 This requires simple majority vote of all deputies.

of state. It elects the titular representatives of the state—The Chairman and Vice-chairman of the People's Republic of China; as also the President of the Supreme People's Court and the Chief Procurator of the Supreme People's Procuratorate. Its consent is necessary when the Chairman of the People's Republic of China chooses the Premier of the State Council and the Vice-chairman and members of the Council of National Defence; or when the Premier chooses the members of the State Council. It has the power to remove them as well. The National People's Council elects its Standing Committee which acts continuously when the National People's Congress is not in session. It has supreme control over all the organs of administrative power as well. The State Council is responsible to it and must report to it; and it has the power of removing the Premier and other members of State Council.

Finally, the National People's Congress exercises such other functions and powers as may be necessary.

It will thus be clear that the National People's Congress is not merely a deliberative assembly but actually governs the country. The legislative and executive powers of the state are concentrated in this single body. The reason why the National

People's Congress has such full and complete power is explained by saying that in a democratic state people must reign supreme, and there should be no checks and balances in the exercise of people's powers.

§ 2. STANDING COMMITTEE OF NATIONAL PEOPLE'S CONGRESS

Since the legislative and executive authority is concentrated in National People's Congress, it needs a permanent body to act in its behalf when it is not in session. In fact, it is in session only once a year. This body is its Standing Committee. The Standing Committee is, therefore, a permanently acting body of the National People's Congress and is composed of the following members who are elected by the National People's Congress: --

- (a) The Chairman,
- (b) The Vice-chairman,
- (c) The Secretary-General, and
- (d) Other members.

The Standing Committee exercises several functions and powers but it does not take major decisions for the economic, political or social life of the country. For instance, the Standing Committee cannot enact laws, decide on economic plans, approve the state budget, ratify the status and boundaries of provinces, autonomous regions and

municipalities directly under the central authority, or decide the questions of war and peace. On all such problems, the final decision is taken by the National People's Congress. But other matters of subsidiary importance or of procedural nature, which need not engage the attention of the National People's Congress, are entrusted to the Standing Committee

An idea of the work done by the National People's Congress can be had from the matters dealt with by the Second Session of the First National People's Congress which opened in Peking on July 5, 1955. They were as follows :

- 1 The adoption of the first Five-Year Plan for the Development of National Economy of the People's Republic of China,
2. The examination and approval of the final account of state revenue and expenditure in 1954 and the 1955 state budget,
- 3 The enactment of the Military Service Law of the People's Republic of China,
- 4 The adoption of the Plan to Harness the Yellow River,
5. The approval of the Report on the Work of the Standing Committee of the National People's Congress, and

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6. The election of two members to fill the vacancies on the Standing Committee.⁸

Other decisions necessary for the carrying out of these major policies are taken, from day to day, by the Standing Committee.

This type of division of functions as between the National People's Congress and its Standing Committee has three obvious advantages. Firstly, the National People's Congress does not have to waste time in matters of procedure or subsidiary importance. Secondly, it is better able, to that extent, to concentrate on problems of central importance and major policies. Finally, matters of procedure or subsidiary importance constantly receive attention, of a closer nature, of the representatives of the people; and are not decided merely by the State Council.

Functions of the Standing Committee

The functions⁹ of the Standing Committee may be classified¹⁰ as below:

(a) *Re. International Relations and Emergency*

⁸ See *China Pictorial*, Peking, August, 1955, p. 1; or *People's China*, Peking, August 1, 1955, pp. 3-4.

⁹ *Ibid*, Article 31.

¹⁰ Professor Yen Ching-yao adopts a simple classification into the functions exercised in ordinary circumstances and those exercised in times of emergency. (*Op. Cit.*, p. 12). The classification given above, however, appears to be more analytical and comprehensive.

- (i) To decide on the appointment and recall of plenipotentiary representatives to foreign states,
 - (ii) To decide on the ratification or abrogation of treaties concluded with foreign states,
 - (iii) To decide, when National People's Congress is not in session, on the proclamation of a state of war in the event of armed attack on the country or in fulfilment of international treaty obligations concerning common defence against aggression,
 - (iv) To decide on general or partial mobilisation, and
 - (v) To decide on the enforcement of martial law throughout the country or in certain areas.
- (b) *Re. Procedure*
- (i) To conduct the election of deputies to the National People's Congress,
 - (ii) To convene the National People's Congress,
 - (iii) To interpret laws,
 - (iv) To adopt decrees,
 - (v) To institute military, diplomatic and

other special titles and ranks,

(vi) To institute and decide on the award of state orders, medals and titles of honour, and

(vii) To decide on the granting of pardons.

(c) *Re. Supervision and Central Control*

(i) To supervise the work of State Council, the Supreme People's Court and Supreme People's Procuratorate,

(ii) To annul decisions and orders of the State Council, which contravene the Constitution, laws or decrees,

(iii) To revise or annul inappropriate decisions issued by government authorities of provinces, autonomous regions and municipalities directly under the central authority,

(iv) To decide on the appointment, or removal, of any Vice-Premier, Minister, Head of Commission, or the Secretary-General of State Council when the National People's Congress is not in session,

(v) To appoint or remove the Vice-Presidents, judges and other members of the Judicial Committee of the Supreme People's Court, and

(*h*) To appoint or remove the Deputy Chief Procurators, procurators and other members of the Procuratorial Committee of the Supreme People's Procuratorate.

The Standing Committee is responsible to the National People's Congress and reports to it. The National People's Congress has power to recall members of its Standing Committee at any time.

§ 3. DEPUTIES TO NATIONAL PEOPLE'S CONGRESS

Deputies to the National People's Congress have the right to address questions to the State Council or to the Ministries and Commission of the State Council, which are under obligation to answer.¹¹ This enables deputies to know why the State Council is adopting a particular policy in a given direction, either for their own information or for satisfying their electorate, and to make appropriate suggestions.

No deputy may be arrested or placed on trial without the consent of the National People's Congress or, when the National People's Congress is not in session, of its Standing Committee.¹² This provision ensures freedom of the person of deputies so that they cannot be arrested or detained by any

¹¹ *Ibid*, Article 36.

¹² *Ibid*, Article 37.

state functionary if they are found inconvenient by him or her.

Deputies themselves are subject to the supervision of the units which elect them. These electoral units have power to replace at any time the deputies they elect.¹³ This provision ensures that the deputies discharge their functions carefully and conscientiously, for otherwise they can be recalled.

§ 4. FREQUENCY OF SESSIONS

The National People's Congress has only one session in a year, though more sessions can be convened if the Standing Committee deems it necessary or if one-fifth of the deputies so propose. This system is deemed to have several advantages. Firstly, deputies are engaged in different types of productive work in their everyday life, and that is not disturbed because of their status as deputies. Secondly, they are in daily, close and constant touch with the rank and file because they do their work in their midst, and a class of professional politicians does not therefore emerge. Thirdly, they are able to bring to every session a freshness of mind and a seriousness of view rare among professional politicians. Finally, they are

¹³ *Ibid*, Article 38.

not inclined to waste time on minor matters like engaging in complicated political manoeuvres. At the same time, people can always bring to the notice of the the State Council or Ministries through their deputies anything they consider important or noteworthy. The State Council and Ministries are obliged to answer and negligent deputies are liable to be recalled.¹⁴ —

¹⁴ This point has been very ably explained by Chien Tuan-Sheng, President of the College of Political and Juridical Sciences, Peking in his article entitled *Our New State Structure* in "*China Reconstructs*", Peking, February 1955, p. 3, whos ays,

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"Our deputies are all actively engaged in various types of work, and do not give up their jobs on being elected. It is through their work that they keep in contact with the people, their needs and opinions. Deputies who are workers or engineers do so by remaining in the factory, where they gain daily first-hand knowledge of the requirements of industry. The same is true of those engaged in agriculture, education, the arts and all other fields. It is held that if the deputies gave up their own work even for their period of office (four years), they could quickly lose their representative character and become professional politicians. Deputies who are in daily contact with the rank and file, on the other hand, bring to every session a freshness of mind and a seriousness of view rare among professional politicians. Nor are they inclined to waste time on such minor matters as private bills, or engage in complicated manoeuvres such as filibustering, which can do so much to delay public business. The short sessions do not limit the right of constituents to bring matters to the attention of the Congress through their deputies at any time. If constituents wish to make complaints or suggestions to the government between sessions, their deputies have the duty to address questions, through the

People in China are not afraid that the Standing Committee might usurp the power of the National People's Congress because the Standing Committee acts on behalf of the Congress and is responsible to it for all that it does. The National People's Congress can call back any of its member or members.

Standing Committee, to the State Council or any of its Ministries and Commissions, which are obliged to answer. Deputies to the National People's Congress also attend sessions of the provincial or other local people's congresses which elected them, and are subject to recall by their electors."

IV THE CHAIRMAN AND THE STATE COUNCIL

§1. CHAIRMAN OF THE PEOPLE'S REPUBLIC OF CHINA

The Chairman of the People's Republic of China is neither the head of state above the legislature nor the chief of the executive power. He is only a symbol of the unity of state.

His Functions

Provisions in the Constitution. According to Constitution¹ the Chairman of the People's Republic of China—

- I. In pursuance of the decisions of the National People's Congress or its Standing Committee—
 - (a) promulgates laws and decrees,
 - (b) appoints or removes the Premier, Vice-Premier, Ministers, Heads of Commissions and the Secretary-General of State Council,
 - (c) appoints or removes the Vice-chairman and other members of the Council of National Defence,

¹ *Constitution*, Articles 40-43.

- (d) confers state orders, medals and titles of honour,
- (e) proclaims general amnesty and grants pardons,
- (f) proclaims martial law,
- (g) proclaims a state of war, and
- (h) orders mobilisation;

II. Represents the People's Republic of China in its relations with foreign states, receives foreign diplomatic representatives and, in pursuance of decisions of the Standing Committee of the National People's Congress, appoints or recalls plenipotentiary representatives to foreign states and ratifies treaties concluded with foreign state ;

III. Commands the armed forces and is Chairman of the Council of National Defence ;

IV. When necessary, convenes a Supreme State Conference and acts as its chairman.

Analysis of Functions. Many functions of the Chairman, it is clear from the above account, are of procedural nature. Whatever he does is based on previous decisions of the National People's Congress or its Standing Committee. He has no

independent powers and can, in no way, infringe the powers of the National People's Congress or its Standing Committee.

The Chairman, however, represents the People's Republic of China in dealings with foreign states, as is the practice in republican states. Likewise he commands the armed forces of the country.

The Chairman of the People's Republic of China is certainly the Chairman of the Council of National Defence but this Council is only an advisory body and cannot, therefore, usurp the powers of the Standing Committee or the State Council. In like manner, though the Chairman has the power of convening the Supreme State Council, even this is only advisory and can take no decisions.

The Status and Position of Chairman

Head of State. Chairman of the People's Republic of China is not the head of the state. Since he exercises his powers and functions only in pursuance of the decisions of the National People's Congress or its Standing Committee, it is clear that the head of state in China is collective. The powers and duties of the head of state are jointly exercised by the Chairman and the Standing Committee of the National People's Congress.

Unique Position. The Chairman thus occupies a unique position in Chinese Constitution and has no exact counterpart in any other country. He is not like the President of the United States of America or France. He resembles the Chairman of the Presidium of the Supreme Soviet in the U.S.S.R. in the sense that both are created by the highest organ of state power and are not a part of any organ of administrative power ; but the Chairman is not the chief member of any Council or Committee, unlike the Soviet Chairman who is the leading spokesman of the Presidium.

Chairman's Election

The Chairman of the People's Republic of China is elected by the National People's Congress. Any citizen (a) having right to vote and stand for election and (b) who has reached the age of 35, is eligible for election as Chairman. His term of office is 4 years.²

Supreme State Conference

The Vice-chairman of China, Chairman of the Standing Committee, Premier of the State Council, and other persons concerned take part in Supreme State Conference. The Chairman of the People's Republic of China submits the views of the Supreme

² *Ibid.*, Article 39.

State Conference on important affairs of state to the National People's Congress, its Standing Committee, the State Council, or other bodies concerned for their consideration and decision.³

Vice-chairman

The Vice-chairman of the People's Republic of China assists the Chairman in his work. He exercises such part of the functions and powers of the Chairman as the Chairman may entrust to him. He is elected in the same manner as the Chairman and his term of office is also four years. Should the Chairman be incapacitated for a prolonged period by reason of health, the functions of Chairman are exercised by the Vice-chairman. Should the office of Chairman fall vacant, the Vice-chairman succeeds to the office of the Chairman.⁴

§ 2. STATE COUNCIL

The State Council of the People's Republic of China is the Central People's Government. It is the executive organ of the National People's Conference, and is the highest administrative organ of the state.

It is composed of the Premier, the Vice-Premiers, Ministers, Heads of Commissions, and the

³ *Ibid*, Article 43.

⁴ *Ibid*, Articles 44ff.

Secretary General. The Chairman of the People's Republic of China chooses the Premier and the National People's Congress decides on the choice of the Premier upon recommendation by the Chairman. The Premier collects his own team of members of the State Council and submits their names to the National People's Congress which decides on their choice. The National People's Congress has power to remove from office the Premier and Vice-Premiers, Ministers, Heads of Commissions and the Secretary-General of the State Council.

Since the State Council is the executive organ of the National People's Congress, it is subject to the control and supervision of the latter. Its functions and powers are various.⁵ In the first place, it formulates administrative measures, issues decisions and orders and verifies their execution in accordance with the Constitution, laws and decrees; and it also submits bills to the National People's Congress or its Standing Committee. In the second place, it co-ordinates and leads the work of Ministries and Commissions, and of local administrative organs; and with that end in view it can revise or annul inappropriate orders issued by them. In the third place, it does a whole host

⁵ *Ibid*, Article 49.

of things which are of vital interest to the community as a whole. It puts into effect the national economic plans and provisions of the state budget; controls foreign and domestic trade; directs cultural, educational and public health work. In the fourth place, it discharges some political functions. It directs the conduct of external affairs; guides the building up of defence forces; protects the interest of state, maintains public order and safeguards the rights of citizens; administers affairs concerning Chinese resident abroad and the nationalities; and ratifies the status and boundaries of autonomous *chou*, counties and municipalities. Finally, it appoints or removes administrative personnel, and exercises such other functions and powers as are vested in it by the National People's Congress or its Standing Committee.

At the present moment, the State Council has 40 members. Under it come the Ministry of the Interior, Ministry of Foreign Affairs and 28 other ministries, the state planning commission, and four other commissions. The State Council has set up State Statistical Bureau and People's Bank and may set up other organizations under its direct jurisdiction.

As the State Council has quite a large number of members, it cannot always meet very frequently. But the Premier and Vice-Premiers, who are ten, and are also heads of administrative departments, meet quite frequently.

V

LOCAL PEOPLE'S CONGRESSES AND COUNCILS

THE People's Republic of China has local organs of state authority, called Local People's Congresses, and their local executive organs, which are also the administrative organs of the state at local levels, called Local Councils

§ I ADMINISTRATIVE DIVISIONS OF CHINA

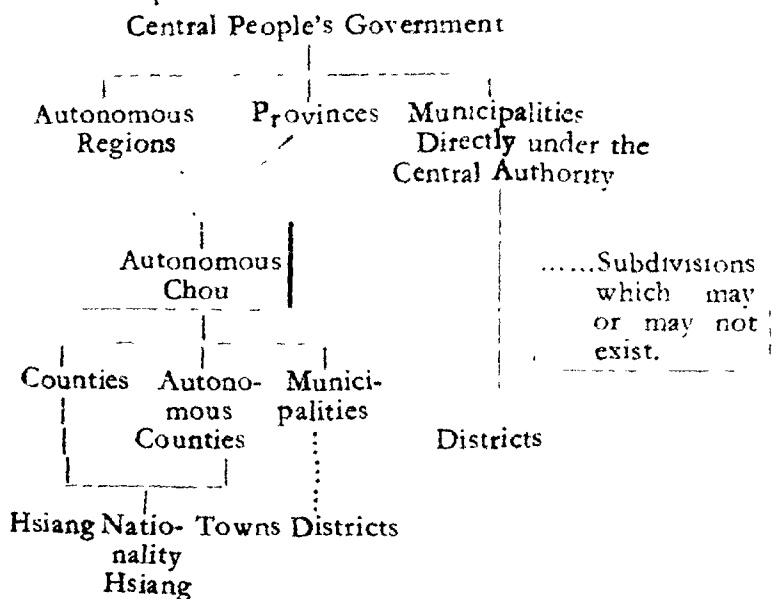
The People's Republic of China is divided into the following levels of administrative and political sub-divisions :—

- I Autonomous Regions, Provinces, Municipalities directly under the Central Authority ,
- II Counties, Autonomous Counties and Municipalities, and
- III. *Hsiang*, Nationality *Hsiang* and Towns.

The local divisions and sub-divisions of the administrative organization of China are usually formed in three levels. But the following points may be noted in this regard : (a) Autonomous *chou* sometimes intervene the first and second levels; (b) municipalities directly under the central

authority are divided into districts which are the lowest level of local state authority and administration; and (c) non-central municipalities are sometimes divided into districts in case they are large units.

The following chart, given by Shie I-yuan¹, a geographer and a worker in the Ministry of Internal Affairs, clearly explains the administrative and political divisions of China :



Before June 1954, there were 30 provinces in China but now the number has been reduced

¹ Shie I-yuan, *Changes in China's Administrative Divisions*, "People's China", Peking, May 16, 1955, p. 28.

to 26. The number of *municipalities directly under the central authority*, which was 14 before June, 1954, has also been reduced to 3 only. Peking, Shanghai and Teintsin are the only municipalities directly under the central authority. This was done to simplify administration, improve organizational set-up and help national construction. According to the 1953 census the population of these municipalities was 27 lacs, 62 lacs and 27 lacs respectively; but in 1955 (October) the figures given to us in China were 30 lacs, 70 lacs and 35 lacs respectively.

Counties are administrative units working under the direction of provinces, autonomous regions or autonomous *chou*. The population of a county is about 200,000 to 300,000 (though the maximum population exceeds a million and the minimum population is as low as 10,000); and a province on an average has 80 to 90 counties (though the maximum number is 140 and the minimum is 20). At the end of 1954, China had 2,151 counties of comparable units.

Municipality is a populated centre with over 50,000 inhabitants mainly engaged in industry and commerce. Municipalities come under the direct administration of either the local government of provinces, or of autonomous regions or autono-

uous *chou*. There were 162 municipalities in China at the end of 1954.

Hsiang and towns are administrative units and work under the administration of a county. *Hsiang* is a populated centre engaged in agriculture, comprising one or several villages. It is a rural division, and there were 220,000 *hsiang* in China at the end of 1954.

Towns are populated centres with sufficient industry and commerce to serve as the local market towns. Their population is about the same as that of *hsiang*. There were over 5,000 towns in China at the end of 1954.

China had at the end of 1954 *autonomous areas* numbering about 70.

It will thus be seen that the local organs of state authority and administrative authority usually exist at three levels; but sometimes there are four levels of local authorities and sometimes only two.

People's congresses and People's Councils are established in China in provinces, municipalities directly under the central authority, counties, other municipalities, municipal districts, *hsiang*, nationality *hsiang*, and towns. Organs of self-government are established in autonomous regions,

autonomous *chou*, and autonomous counties, and their form is decided according to the wishes of the people.

§ 2. LOCAL PEOPLE'S CONGRESSES

Local people's congresses at all levels are organs of government authority in their respective localities.²

Deputies to the people's congresses of provinces, municipalities directly under the central authority, counties and municipalities divided into districts are elected by the people's congress of the next lower level; but the deputies to the people's congresses of municipalities not divided into districts, municipal districts, *hsiang*, nationality *hsiang* and towns are directly elected by the voters.

The term of Provincial People's Congresses is 4 years; but it is 2 years in other cases.

Local People's Congresses at every level see that laws and decrees are duly observed and executed; and they also draw up plans for local improvement. Specifically they—

1. Ensure the observance and execution of laws and decrees in their respective administrative areas,
2. Draw up plans for local economic and

² *Constitution*, Article 55.

- cultural development and for public works,
3. Examine and approve local budgets and financial reports,
 4. Protect public property,
 5. Maintain public order, and
 6. Safeguard the rights of citizens and the equal rights of national minorities.³

Local people's congresses elect members of the local people's councils at corresponding levels; and also have the power to recall them. Local people's congresses have the power to revise or annul inappropriate decisions and orders issued by local people's councils at corresponding levels. People's congresses at county and above have the power to revise or annul inappropriate decisions issued by the congresses at the next lower level or of councils at the next lower level.

Deputies to congresses of provinces, municipalities directly under the central authority, counties and municipalities divided into districts are subject to supervision by the units which elect them. Deputies to congresses of municipalities not divided into districts, municipal districts, *hsiang*, nationality *hsiang* and towns are subject to supervi-

³ *Ibid.*, Article 58.

sion by their electorates. The electoral units and electorate which elect the deputies to the local congresses have power at any time to recall their deputies.

Method of Election. Elections in China are direct at the basic level; but deputies to congresses of county and higher levels are elected by the congress of the next lower level, *i.e.*, elections are indirect. At basic level, elections are held by show of hand or secret ballot, but at other levels, there is always secret ballot. In other words, deputies to the congresses of all levels are elected on the principle of universal suffrage but there is no completely direct and secret ballot at all levels. Chien Tuang-sheng, President of the College of Political and Juridical Sciences at Peking, says that there is still a large percentage of illiteracy in China and there also exist large areas where travel and communications are still very difficult. At the basic level, *i.e.*, *hsiang*, and town level people know candidates personally and, therefore, elect them often by show of hands; but they may know little about candidates for higher congresses and, therefore, provision has been made for the election of deputies for the congresses of all other levels by deputies at the next lower level.⁴

⁴ Chien Tuang-sheng, *Our New State Structure* in "China Reconstructs", Peking, February, 1955, p. 2.

Choice of Candidates. This is a very important matter in China and a great deal of serious thought is given to deciding as to who should be elected as deputies. The task is broken up into two parts, *viz.*, (a) deciding the qualities which the deputies representing a particular area should possess, and (b) choosing candidates who possess those qualities. Satisfactory choice depends primarily upon three things: in the first place, electors must know the candidates; in the second place, they should be clear as regards the qualities which the deputies should possess; and, finally, they must have opportunity of exchanging freely their views about the suitability of each candidate. At the basic level, the electors know the candidates personally; and satisfactory conditions exist and are created for free exchange of views as regards the qualities that a person who is elected as a deputy should possess, as also the merits and demerits of each candidate. When literacy and means of communication improve substantially, candidates would be in a position to know candidates for other congresses also and then, it is hoped, that direct election would become universal.

In every *hsiang* and town, the qualities of an ideal deputy are collectively decided; and then the Communist Party, other parties, and people's or-

ganizations present joint or separate lists of candidates. Any individual voter may also suggest the name of a candidate for consideration.

Voting for Candidates. The number of candidates who are ultimately nominated is equal to the number of seats. Then voting takes place. A voter may vote for a joint list or a separate list. He can even vote for a candidate whose name does not appear in any list and who has not been formally nominated. Voting rights are enjoyed by all persons above 18 years of age (with negligible exceptions), and by all sections of population. Workers enjoy this right—as a matter of fact, they are the leaders of modern China in her task of socialist construction. Peasants, who constitute numerically the largest social class in China, also have voting power. Businessmen and national capitalists also have full voting right and can stand for election. National minorities, armed forces and Chinese living abroad have also right to vote and stand for election. Only former landlords and bourgeois capitalists (about 3% of total population) have for the time being been deprived of their right to vote and stand for election.

Basis of Representation. Representation of different classes or localities in the congresses is

not strictly in proportion to population and several adjustments are made, as follows. (a) Proportion of deputies to population varies as between rural and urban areas. In county congresses, urban areas send one deputy for every 500 citizens but rural areas have one deputy for every 2,000 citizens. At the provincial level, the respective figures are one deputy for every 20,000 citizens and one to three deputies for every 200,000 citizens. For National People's Congress, the representation is of the order of one deputy for 100,000 citizens in urban areas and one deputy for 800,000 citizens in rural areas. This system has been evolved with a view to give due representation to industrial workers who are the leaders of the modern change but who are not the largest social class in China. Peasants constitute 80% of the population of China; and if they were given the same order of representation as industrial workers, the former would not get representation commensurate with their political status and their leading role in the rapid economic growth of the whole economy along socialist lines. (b) Special provision has been made to give due representation to national minorities, who constitute about $\frac{1}{14}$ th of the population of China but have $\frac{1}{7}$ to $\frac{1}{8}$ of the seats in the National People's Congress; to armed forces who

have 5% seats in the said Congress; and the Chinese resident abroad who have been allotted 2.5% seats in the National People's Congress. (c) Similarly, purely numerical basis would be to the disadvantage of national capitalists who constitute a very small proportion of total population but who have an important economic function. (d) The case of sparsely populated areas has also been properly considered; and it has been provided that no province can have less than three deputies to the National People's Congress. On the basis of population Ninghsia Province, with a population of 90,000, could have only one deputy but it has three.⁵

§ 3. LOCAL PEOPLE'S COUNCILS

Local people's councils are the executive organs of local people's congresses at corresponding levels, and are administrative organs of state in their respective localities. The term of office of a local people's council is the same as that of the local people's congress at the corresponding level

⁵ A very lucid, clear and able account of these and other aspects has been given by the Chinese Journalist, Ching Chung-Hwa in "China Reconstructs" (Peking, July-August, 1953) under the title *World's Biggest Elections* in which, *inter alia*, relevant provisions have been pictorially explained.

It is composed of a head, deputy heads⁶ and council members. Its functions and powers⁷ are as under:

1. To administer the area within the limits of the authority prescribed by law ;
2. To carry out the decisions issued by congresses at corresponding levels ;
3. To carry out the decisions and orders issued by administrative organs of state at higher levels ;
4. To issue orders and decisions within the limits of the authority prescribed by law,
5. To direct the works of subordinate departments and of people's councils at lower levels, if any,
6. To suspend the carrying out of inappropriate orders and decisions of congresses of next lower level, if any ;
7. To raise or annul inappropriate orders and directives issued by subordinate departments ; and

6 They are known as provincial governors and deputy provincial governors; mayors and deputy mayors; county heads and deputy county heads; district heads and deputy district heads; *hsiang* heads and deputy *hsiang* heads,; town heads and deputy town heads.

7 *Constitution*, Articles 64-65.

8. To revise or annul inappropriate decisions and orders issued by councils at lower levels, if any.

Local people's councils are responsible, in the first place, to the people's congresses at corresponding levels. Then they are responsible to the administrative organs of state at the next higher level. Finally, they are subordinate to and work under the co-ordinating direction of the State Council. Local people's councils are thus subject to three authorities. The arrangement can work if the three of them are of one mind. In case of conflict, there can be serious difficulties. Since the local people's council has access to the people's council at the next higher stage, instead of becoming subordinate to the local people's congress at its own level, it can report against the latter to the local people's council at the next higher level, and eventually and through proper channel, even to State Council or National People's Congress. If that begins to happen frequently or commonly, the freedom of the local people's congresses would be greatly and effectively curtailed. Moreover, the Constitution does not seem to lay down how many times must the local people's congresses meet or if they must meet at all during the course of a year, so that it is theoretically possible for the

local people's councils to run the entire administration without the local people's congress at the corresponding level being called even once. These are, however, all hypothetical situations; and since the Constitution of China is a brief and straightforward document, many more situations like these can be imagined. But, in fact, China is so well united and there is such great unity of purpose and will to make rapid progress along agreed lines that such situations are unlikely to arise in practice; and besides, the Constitution itself provides correctives in several places. Finally, the present Constitution, as has already been stated, is only a temporary arrangement; and another Constitution, of a final character, would be forged after 20 years when China has become a socialist state; and no doubt it would be framed on the basis of the experience gained in the working of the present Constitution.

§ 4. SELF-GOVERNMENT TO NATIONAL MINORITIES

The People's Republic of China is a single, multinational state. There are about 60 national minorities in China numbering in the aggregate approximately 40 million people, *i.e.*, 7 % of the country's total population. The majority nationality

is Han, forming 93% of the total population. The larger national minority groups are Chaung, Uighur, Hui, Yi, Tibetan, Miao, Mongolian, Puyi, Korean, Tung, Yao and Tai.⁸

In all autonomous regions, autonomous *chow* and autonomous counties, organs of self-government are formed in accordance with the basic principles applying to all other local organs of the state. But the form of each organ may be determined in accordance with the wishes of the majority of the people of the nationality or nationalities enjoying regional autonomy in a given area. The organs of self-government of all autonomous regions, autonomous *chow* and autonomous counties not only exercise the functions and powers of other local organs of state but they also exercise autonomy within certain limits, *i. e.*, they enjoy limited authority. They administer their own local finances ; organize their local public security forces in accordance with the military system of the state; draw up statutes governing the exercise of autonomy or separate regulations suited to the political economic and cultural characteristics of the nationality or nationalities in a given area ; but such statutes and regulations are subject to endorse-

⁸ Wang Shu-tang, *China, Land of Many Nationalities* (Peking, 1944), pp. 5-7.

ment by the Standing Committee of the National People's Congress. Organs of self-government employ the spoken and written language or languages commonly used in the locality. The higher organs of the state are required by Constitution to assist the various national minorities in their political, economic and cultural development. The national minorities are, therefore, free to develop in their own way consistent with over-all national interest.

§ 5. ELECTIONS IN COUNTRYSIDE: A TYPICAL CASE

Hsiao Peng, journalist-actress-teacher, has given a vivid description of the manner in which elections were held in a *hsiang*, named Tsai-kung-chuang, on the western outskirts of Peking.⁹ A team of representatives of Peking municipal election committee was sent to this *hsiang* to start off the proceedings. It organized local government personnel and socially active peasants and helped them to form their own local election committee. This committee took up the work of election in its own hands. The work can be broken up as follows:

1. To explain the election law to peasants to make them conscious of their rights,
2. To carry out the registration of voters,

⁹ Hsiao Peng, *Election in the Countryside*, "China Reconstructs", Peking, March-April, 1955 pp. 14-17.

3. To divide voters to small groups for discussing suitability of candidates,
4. To decide upon the list of nominees, and
5. To record actual votes cast.

The *hsiang* people were to elect 35 deputies to the *hsiang* congress; and these deputies were, in their turn, to elect two deputies to the county people's congress

1. *Awakening of Political Consciousness.* It was found necessary to awaken political consciousness among the people of Tsai-kung-chuang and to carry through other proceedings without disturbing agricultural operations which were in full swing at that time and from which peasants could not be called away. Peasants grudged every hour spent in meetings. They were also not clear as to the real meaning and implications of elections.

Loudspeakers were installed in the fields so that peasants could be approached while they were working. This was, however, found to be unsatisfactory because personal contact is always more effective. Hence volunteers were enrolled to help those mutual aid teams which were over-worked. Volunteers readily came forward and with their help the members of the busy team were enabled to get off from their fields in time to attend meetings and take part in elections.

Another difficulty was to organize women. For this purpose some young girls who had worked as propagandists in various villages were contacted and with their help women of the village were organized. Good relations were soon established and women began to come to meetings. "If one didn't see it with one's own eyes, one would hardly believe that our rural women, so long home-bound, could develop such an enthusiasm for politics," says Hsiao Peng.

2. *Registration of Voters.* Four booths were set up in the fields with the object of registering the voters. But the peasants had to stand up in queue before the booths, which was burdensome and it also meant a waste of their time. Hence election committees began going out to the fields in the noon work-break and record the names of voters there. They also visited homes to enlist women voters. Nine days after registration the names of voters written in black letters on red paper were posted in the village.

3. *Qualifications for Nomination.* What should be the qualifications of nominees? This question now began to be discussed among citizens of the *hsiang*. There was strong sentiment against putting up bossy people or hot-tempered persons. Honesty

was also considered to be a very desirable quality. But good temper and honesty were not enough and it was suggested that people who could get work done should be nominated. Somebody suggested that persons who could easily go round the *hsiang* and deliver message, *i.e.*, those who owned bicycles, should be nominated. Others wanted education to be taken into account so that the deputies could interpret government directives to people and communicate people's wishes to the government. Others wanted knowledge of farming to be paid attention and said that only good leaders of production should be sent up. The final list that was drawn up included the following qualifications: political dependability, good record as a worker, sense of justice, loyalty to people, good personal attitude and ability of leadership in production.

4. *Nominations.* Who would fit the bill? Search for suitable candidates was the next task. Names were suggested by *hsiang* Communist Party, Youth League, Women's Association and other people's organizations and also by individuals. The number of candidates proposed exceeded the number of deputies to be chosen. Meetings were then held to select the best candidates out of the proposed names. Names were taken one by one, the qualities and shortcomings of each

person were frankly and openly discussed, and decision in each case was taken. The existing personnel of local government also came under critical examination with a view to decide if they should be chosen as deputies ; and they were nominated only if they were found satisfactory. Every candidate was given an opportunity to express himself on his own merits and demerits; and some of them undertook to overcome their shortcomings and then they were elected. In this way, candidates were finally nominated, the total number of nominations being equal to the total number of seats to be filled in.

5. *Elections.* After that, the votes were cast. Anybody could cast a vote for any candidate or all the candidates included in the list, or even for those not included in the list. On the basis of the votes that were cast, final election results were declared.

VI

THE PEOPLE'S COURTS AND PROCURATORATE

The people's courts and people's procuratorate in China are meant to protect the legitimate rights of the people and to maintain law and order in the country. The First National People's Congress passed two organic laws—one relating to the organisation of people's courts and basic judicial procedure, and the other concerning the people's procuratorate.

§ 1. PEOPLE'S COURTS

Judicial authority is exercised in China by the Supreme People's Court, local people's courts and special people's courts. The President of the Supreme People's Court is elected by the National People's Congress¹ and can be removed from office by it. Presidents of people's courts at county level and above are elected by the local people's congresses at corresponding level. The term of office of the President of the Supreme People's Court and of presidents of local people's courts is 4 years.²

¹ *Constitution*, Article 27 (7).

² *Ibid.*, Article 14.

The system of people's assessors applies to judicial proceedings in the people's courts. Assessors are elected from among the population; and any one who has the right to vote and stand for election and has attained the age of 23 can be chosen as assessor. Hence people at large can take part in, as also supervise, judicial work of courts.

Cases are heard in public (unless otherwise provided for by law) and the accused has the right to defence and can have counsel or friends or relatives to defend him. In administering justice, courts are independent subject only to the law. Interference with or influence or coercion of courts is strictly forbidden.

Supreme People's Court is the highest judicial organ. It supervises the judicial work of local and special courts. It is responsible to National People's Congress and reports to it.

Local people's courts at higher levels supervise the judicial work of people's courts at lower levels. They are all responsible to the local people's congresses at corresponding levels and report to them.

The judicial structure of the People's Republic of China is as follows. At the lowest level are the *Primary Courts* which work at county level or

its equivalent level. At the next higher level stand *Intermediate Courts* which are meant for groups of counties or for autonomous *chou*. Above them are *High Courts* which work at provincial level or its equivalent level. Finally, there is *Supreme Court* which is the highest judicial authority of China. Most cases begin in primary courts but more serious cases may have first hearing in higher courts. There is participation of assessors at the first trial. Generally an appeal is allowed, and the judgment of the court of appeal is final.

§ 2. PEOPLE'S PROSECUTORATE

People's procuratorate is organized on the same basis as People's Courts. Procurators act as State prosecutors and also see that the law is strictly observed by the administrative departments of the State Council and others.

The task of Supreme People's Procuratorate is to ensure that law is observed; and with this end in view, it has the right to supervise all the departments of State, civil servants and citizens. According to Constitution, the Supreme People's Procuratorate of the People's Republic of China exercises procuratorial authority over (*i.e.*, supervises the work of) all departments of State Council, all local organs of state, persons working in organs

of state, and citizens, to ensure observance of the law.³ The Chief Procurator of the Supreme People's Procuratorate is elected by the National People's Congress and can be removed from office by it. The term of his office is 4 years. Supreme People's Procuratorate is responsible to the National People's Congress or its Standing Committee) and reports to it.

Local and special people's procuratorates exercise procuratorial authority within the limits prescribed by law. They work under the leadership of the people's procuratorates at higher levels, and all work under the co-ordinating direction of the Supreme People's Procuratorate. In the exercise of their authority local organs of the people's procuratorate are independent and are not subject to interference by local organs of state.⁴

3 *Ibid.* Article 81.

4 It appears that People's Procuratorate at local levels is not elected by local people's congress and is not responsible to it ; nor does it seem to be responsible to local people's council.

VII

CHINESE PEOPLE'S POLITICAL CONSULTATIVE CONFERENCE (CPPCC)

China maintains a democratic united front, for which there is a provision in the Constitution. In this all democratic parties, groups and classes, including the capitalist class, take part under the leadership of the Communist Party of China. It is called Chinese People's Political Consultative Conference or CPPCC, and it seeks to unite all democratic parties as also nationalities, people's organisations, and democratic and patriotic persons in China.

It met for the first time in September 1949 and began exercising the functions of the National People's Congress which was elected only much later. The first CPPCC had 501 delegates, 77 alternative delegates and 75 specially invited persons. The delegates represented the Communist Party, other democratic parties, people's organizations, liberated areas, army, national minorities, overseas Chinese, and other interested sections of population. It was this body which proclaimed the founding of the People's Republic of China, elected the Council

of the Central People's Government and adopted the Common Programme which was a provisional constitution. The National Committee of the CPPCC served the country well during the first five years of the life of the new Republic.

In 1953, the Communist Party proposed to the National Committee of the CPPCC that a National People's Congress should be convened. This proposal was accepted and submitted to the Central People's Government. In accordance with this decision, congresses at different local levels were held between June 1953 and August 1954 to nominate candidates for National People's Congress. After discussions, the National Committee of the CPPCC nominated candidates to stand for the National People's Congress. People's congresses in provinces, autonomous regions, and central municipalities then drew up lists, giving due consideration to the CPPCC's list, and elected deputies to the National People's Congress. The latter thus came into existence.

The National People's Congress first opened in Peking on September 15, 1954. It marked the beginning of a new phase in the political life of China because it was the first elected congress at the national level. Five days after, on Sep-

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tember 20, 1954, it adopted the Constitution of the People's Republic of China.

The original purpose of CPPCC thus came to an end, and it ceased to exercise the functions and powers of the National People's Congress. But it continues today as people's democratic united front. The Preamble to the Constitution says :

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In the course of the great struggle to establish the People's Republic of China, the people of our country forged a broad people's democratic united front, composed of all democratic classes, democratic parties and groups, and popular organizations, and led by the Communist Party of China. This people's democratic united front will continue to play its part in mobilizing and rallying the whole people in common struggle to fulfil the fundamental task of the state during the transition and to oppose enemies within and without.

The continued existence and working of CPPCC is, as such, clearly envisaged in the Constitution. It is necessary that everybody in the country pulls the same way and helps in a united manner to improve the country economically and otherwise. Hence it is important that the CPPCC continues

to play its role of forging a united democratic front.

The Second National Committee of the CPPCC met for the first time between 21st and 25th December, 1954. It adopted new regulations and elected new leaders. The regulations embody "general principles" laying down the main tasks. The Second National Committee is composed of 559 members representing 29 bodies or units. It embraces practically every organization qualified to take part. In this way it would be possible for it to forge alliance between workers and peasants and extend alliances to all others with whom co-operation is possible. Its tasks are now as follows :

1. To settle social problems arising out of interrelationships between different classes to keep in close touch with the people at large, to bring their opinions to the notice of governmental bodies, and to make suggestions;
2. To settle all problems affecting co-operation within the CPPCC through consultation among themselves ;
3. To consult with one another on international problems;

4. To consult with one another on the nomination of candidates to the National People's Congress and local people's congresses at the same level; and on the nomination of members of the political consultative conferences of all levels; and
5. On a voluntary basis, to study Marxism-Leninism, and to strive, on a voluntary basis, to remould outworn ways of thinking.

The CPPCC is said to typify the great unity of the Chinese people in their fight against foreign aggression, in defence of peace, and in their determination to build a socialist society.⁵

⁵ *People's China*, Peking, Feb. 16, 1955, pp. 33-35.

VIII

DEMOCRATIC CENTRALISM

The political system in China is known as democratic centralism. We shall now attempt to understand this system and its implications a little closely.

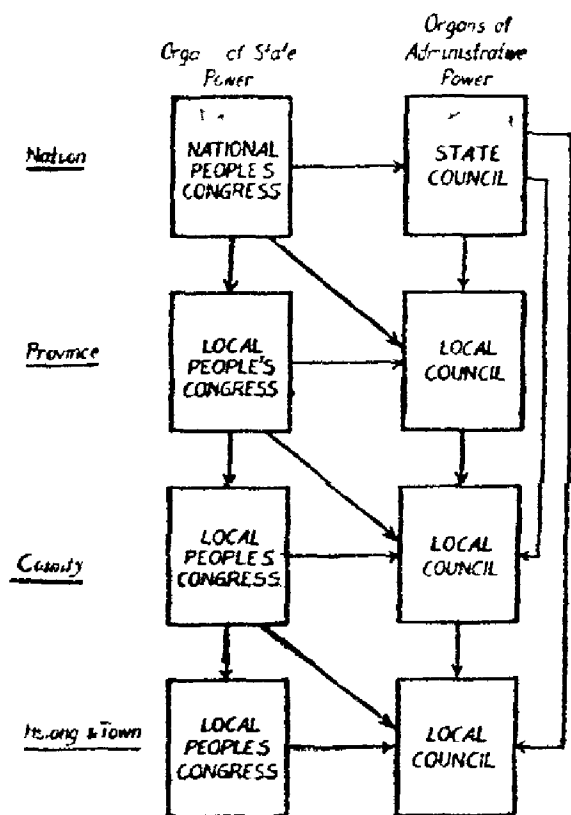
The Element of Centralisation

It is believed in China that for rapid economic growth of the country along socialist lines, unified leadership and unified planning are necessary, so that energy is not frittered away in haphazard and anarchic discussions and in other ways. Therefore a central machinery—National People's Congress and its executive organ, *i.e.*, State Council—has been devised to plan the affairs of the whole country and to give it unified leadership.

Centralisation of State Power. The exercise of state power is completely unified in the National People's Congress. This Congress guides and supervises provincial people's congresses; provincial people's congresses guide and supervise the county congresses; and the latter guide and supervise

hsiang and town people's congresses. There is, therefore, centralisation of state power.

Centralization of Administrative Power. Local Councils, of a particular level, are responsible to the local councils at the next higher level. They are subordinate to and work under the co-ordinating



(Chart showing organs of state and administrative power at different levels and the system of centralized control. Arrows indicate direction of control.)

direction of State Council. Centralization of administrative power is thus established.

Superior Position of State Power over Administrative Power. All the administrative organs of the state, i.e.; State Council and local councils are created from and are supervised by National People's Congress and local people's councils respectively, and can be removed by them. Hence the administrative organs of the state cannot act independently of the people's congresses.

Head of the State. Functions and powers of the Head of the State are jointly exercised by the Standing Committee of the National People's Congress and the Chairman of the People's Republic of China elected by the National People's Congress. Hence head of the state is collective. The Chairman of the People's Republic of China has no exact counterpart in any other country. Neither the Standing Committee nor Chairman has powers exceeding those of National People's Congress.

National People's Congress is, as such, the all-powerful authority in the People's Republic of China. On the administrative side, the State Council is the all-powerful organ of administrative power. Local Councils are very carefully and thoroughly supervised in their work. In the first place, they

are subject to guidance and supervision of local which people's congresses at corresponding level, of they are creations. Secondly, they are subject to the guidance and supervision of local councils at the next higher level. Thirdly, they are subject to the co-ordinating guidance of the State Council itself. Finally, their decisions and orders can be revised or annulled by local people's congresses at the next higher level. People's Congresses at different levels guide and supervise councils at corresponding levels. In this way the whole structure of the organs of state power and administrative power is very highly centralized.

The Element of Democracy

Whereas there is centralization in political set-up in China, there is also democracy there. At the lowest level of local organization, namely *ne ch'ang* and town level, deputies to local people's congresses are elected by citizens above 18 years; and the latter can recall them whenever they like. There is universal franchise and there is no educational, property or any other qualification. A small percentage of population (3% of entire and 1.6% of voting population) is deprived by law of the right to vote and rule, but that is only for the time being. The deputies of the local people's congress elect deputies to the county people's

congresses; and can recall them. Similarly, deputies to the county people's congresses elect deputies to the provincial people's congresses and can also remove them from office. Finally, deputies to the provincial people's congresses elect deputies to National People's Congress, and the latter can be removed from office by the former. It will thus be seen that the real power is in the hands of the people themselves and their deputies are regarded in China as "naturally genuine spokesmen for the people". ✓

The deputies, as representatives of the people, have certain effective rights, powers and duties;

- (a) Deputies themselves are subject to the supervision of the electorate and electoral units which elect them. Hence they must have intimate touch with them.
- (b) Deputies to the National People's Congress have right to address questions to the State Council or any Government Department under State Council, which must give an answer. Similar rights are enjoyed by deputies at local levels.
- (c) Article 17 of the Constitution says that "all organs of state must rely on the masses of the people, constantly maintain close contact with them, heed their

opinions and accept their supervision”.

- (d) According to Article 18 of the Constitution, “all servants of the state must be loyal to the people’s democratic system, observe the Constitution and law and strive to serve the people”.
- (e) The people, on their part, have a right to complain against any civil servant for neglect of duty or transgression of law, either verbally or in writing, to any state body at any level.
- (f) People can point shortcomings of Government work and make suggestions through organizations to which they belong, or through meetings, or through press.

In this way, the deputies and civil servants have to be alert and conscientious in the discharge of their duties, and they cannot do anything detrimental to the interests of the people.

Democratic Centralism

This system of political organization, which combines the features of centralism as well as of democracy, is called Democratic Centralism. In the words of Liu Shao-chi, “our political system has a high degree of centralism but is based on

a high degree of democracy.” He further explains that it is not “despotic centralism of handful of big feudal lords and capitalists” but it is the “democratic centralism of the people led by the working class.”¹ Chairman Mao Tse-tung observes as follows: “It is at once democratic and centralised, that is, centralized on the basis of democracy and democratic under centralized guidance”.² Professor Chou Keng-sheng, Vice-President of the People’s Institute of Foreign Affairs, defines it in the following words: “This is a political system in which state organs derive their power from the people or the people’s representatives but with the leadership centralized at the highest level.”³

Critics outside China feel that in such a set-up real democracy cannot exist and freedom of the people is bound to be considerably curtailed, because in their judgment democracy and centralism are not wholly compatible. They would, however, at the same time concede that without centralism of some shade or character, rapid economic progress cannot be achieved. Advocates of political centralism of

¹ Liu Shao-chi, *Report on the Draft Constitution* (Peking, 1954), p. 37.

² Mao Tse-tung, *On Coalition Government*.

³ Chou Keng-sheng, *Constitution for 600 Million*, “China Reconstructs”, Peking, September-October, 1954, p. 4.

on the subject.

Even if we do not see eye to eye with the Chinese system of democratic centralism in all respects, there might still be points of interest to us which might be usefully suggestive or which might be pointers to new directions or new traditions of a healthy nature.

IX

FUNDAMENTAL RIGHTS, FREEDOMS AND DUTIES OF CITIZENS

Provisions of Chapter III of the Constitution of the People's Republic of China, entitled "Fundamental Right and Duties of Citizens", are, according to Professor Wu Chia-lin of the Law Department of the People's University at Peking a full reflection of "the fact that the Chinese people are masters of the country".¹

In old China, common people had to perform all sorts of duties, but rights and freedoms were reserved for the ruling class. But when China was liberated in 1949, the common people acquired democratic rights and freedoms as set out in the Common Programme adopted by the Chinese People's Political Consultative Conference in 1949. In 1954, the Constitution was passed and it stated on a broader basis these rights and freedoms, as also the duties of citizens and these now have legal and binding force.

§ 1. EQUAL RIGHTS FOR ALL CITIZENS

In the People's Republic of China, all citizens

¹ Wu Chia-lin, *Democratic Rights of a Citizen*, "People's China," Peking, December 16, 1954, p. 3.

are equal before the law.² Citizens in China enjoy equal political rights ; and they are backed by equal social and economic rights. Professor Li Hao-Pei of the Bureau of Codification of Laws says, "Political rights, if not backed by social and economic ones, can never be complete. In capitalist countries, even those in which the people have achieved the greatest measure of democracy possible under the circumstances this limitation has never been overcome. The rights of our citizens do not suffer from such one-sidedness."³ The country is committed to the gradual abolition of exploitation in all forms and phases and the establishment of a socialist society the fruits of which all would equally enjoy. There is no restriction on the rights and freedoms of the people because of absence of property or education. The state provides material basis for the enjoyment of these rights and freedoms. Even women and national minorities have the same rights as men and members of the Han nationality.

Equal Rights for Women. Chinese women enjoy the same political, economic and social rights as men. The Constitution provides that "women

² *Constitution*, Article 85.

³ Li Hao-Pei, *Citizen's Rights and Duties*, "China Reconstructs," Peking, April 1955, p. 2.

have equal rights with men to vote and stand for election"⁴ As many as 147 deputies of the National People's Congress are women They are also present in local people's congresses Women are ministers and vice-ministers in government

So far as economic life is concerned, women workers enjoy equal pay for equal work with men. They are locomotive drivers, factory managers, farm managers, machine operators, architects, doctors and administrators They occupy today many responsible positions and their appointment is generally encouraged Adequate provision has been made for maternity leave and benefit⁵ Women workers and staff members are entitled in China to a total of 56 days' leave of absence from work before and after confinement Full wages are paid during maternity leave⁶

⁴ *Constitution*, Article 86

⁵ *Labour Insurance Regulations* (promulgated on Feb. 26, 1951, and amended by Government Administration Council on January 2, 1953), Article 16 A

⁶ Income Security Recommendation passed by International Labour Conference lays down that a woman worker should have a right to maternity leave for 6 weeks before child-birth and she should not be permitted to work for 6 weeks after her confinement The rate of maternity benefit recommended is 100% of the current wage for female unskilled worker or 75% of the previous earnings of the beneficiary, whichever is higher The 1919 Convention had recommended a total period of maternity leave of 8 weeks In India, maternity leave is granted under Employ-

Women enjoy equal status in educational and cultural life of China as well. The number of female students entering educational institutions is increasing at a fast rate. As regards higher learning, girls formed in 1954-55 43% of the total number of students enrolled in medical colleges, 30% in pedagogical institutes and 26.3% in polytechnics. In society generally and in public affairs, women of China enjoy equal rights with men.

In domestic life also, women have equal rights with men. The law regards husband and wife as companions living together and they enjoy equal status in the home.⁷ It has also been clearly provided that both husband and wife shall have the right to free choice of occupation and free participation in work or in social activities.⁸ They also have equal rights in the possession and management of family property.⁹

It would thus be seen that Article 96 of the Constitution, which says that "Women in the

ees' State Insurance Act for 12 weeks and the rate of benefit is half of the average daily wage or 12 as a day, whichever is higher. In China the duration of maternity benefit is less but the rate of maternity benefit more than in other countries.

7 *Marriage Law*, Article 7.

8 *Ibid*, Article 9.

9 *Ibid*, Article 10.

People's Republic of China enjoy equal rights with men in all spheres of political, economic, cultural, social and domestic life" is a living reality in China today. These rights do not exist merely on paper but they are actually enjoyed by women in that country.

National Minorities. Equal rights are enjoyed by the people of national minorities as well. There are about 60 national minorities in China and they constitute nearly 7% of the total population of the country (about 40 million people in all). They enjoy all the rights enjoyed by people in general as also additional rights guaranteed to them by the Constitution. Article 3 of the Constitution says:

The People's Republic of China is a single multinational state.

All the nationalities are equal. Discrimination against, or oppression of, any nationality, and acts which undermine the unity of the nationalities are prohibited.

All the nationalities have freedom to use and foster the growth of their spoken and written languages, and to preserve or reform their own customs or ways.

Regional autonomy applies in areas where

people of national minorities live in compact communities. National autonomous areas are inalienable parts of the People's Republic of China.

These rights are enjoyed by national minorities in a real sense in China today and are not merely of theoretical value.

§ 2. POLITICAL RIGHT : RIGHT TO VOTE AND STAND FOR ELECTION

According to Article 86 of the Constitution, "citizens of the People's Republic of China who have reached the age of *eighteen* have the right to vote and stand for election whatever their nationality race, sex, occupation, social origin, religious belief, education, property status or length of residence, except insane persons and persons deprived by law of the right to vote and stand for elections." The legal voting age in China is low as compared to other countries, specially because it is also the age at which a person has right to get elected. This is explained by saying that opportunity is given to young men and women with initiative to take part in the organs of state power which widens the scope of democracy and is good for the future.¹⁰ In other countries, voting age is 21; and literary and

¹⁰ Chou Keng-sheng, *Op. Cit.*, p. 4.

property qualifications also exist, and registration requires long residence.

Only two classes of persons are excluded in China from the right to vote and stand for election, 112.,

- (a) insane persons, and
- (b) persons deprived of this right by law. Former landlords are deprived of this right, as also the former bureaucratic capitalists, but only for the time being.

The total number of persons thus excluded is only 1.64% of the total population and 3% of the population above 18 years. But this exclusion is of a temporary nature. Landlords who observe law, do not participate in counter-revolutionary activities and engage in productive labour or other work beneficial to the people for 5 years following the land reform, can have their class status legally changed. Landlords who participated in revolution have voting right.

All expenses incurred in connexion with elections are paid by the Government out of public funds.

In China, comparisons are often made with conditions in the United States of America. It is said that in the United States negroes have to face dangers and hardships in voting in some parts. But

in China severe penalties are imposed to prevent this and such a thing is utterly inconceivable. National minorities constituting 1/4th of population have been given 1/8ths of seats in the National People's Congress. They are also elected from other areas, so that they occupy 1/7th of the total number of seats in the National People's Congress. As against this, in the United States negroes constitute 1/10th of the entire population but not a single one of the 96 senators is a negro ; other minorities, such as Mexicans and Red Indians, are also unrepresented or under-represented.¹¹

§ 3. FUNDAMENTAL RIGHTS OF CITIZENS

The citizens of People's Republic of China enjoy, besides the political right to vote and stand for election, some other important and fundamental rights which are as follows :

1. *Right to Work*. This, in other words, means the right to get remunerative employment with a view to support oneself and one's dependants. To guarantee the enjoyment of this right, the state, by planned development of the national economy, gradually creates more employment.

¹¹ Ching Chung-hwa, *World's Biggest Elections*, "China Reconstructs," Peking, July-August, 1953, pp. 3-4.

Unemployment has been greatly reduced in China though it still continues to some extent today as a hangover from the past. Employment is, however, being created at a fast rate. For instance, between July 1950 and 1953 work was found for more than 2 million people and others found jobs for themselves. In 1953 alone, the number of workers and staff in state and state-private industrial enterprises increased by 20% over 1952. In north-east China, where economic progress has been rapid, unemployment is practically non-existent.¹² The First Five-Year Plan would provide employment to 4.2 million people during 1953-1957.

2. *Right to Rest and Leisure.* This is the second right of the citizens of China. To guarantee this right, the state prescribes working hours and holidays and extends material facilities to enable people to rest and build health.

Before 1949, working hours were long and there was no proper and adequate provision for leave and holidays. But this has now been properly regulated. In state and large private industrial enterprises, eight hours a day is the rule, and if conditions of work are unhealthy, workers have to work for only six hours a day. I visited the Cotton

¹² Wu Chia-lin, *Democratic Rights of a Chinese Citizen*, "People's China," Peking, December 16, 1954 p. 4.

Textile State Factory No. 2 at Peking in October 1955 and was told on enquiry that the hours of work there were $7\frac{1}{2}$ hours per day, and work had to be done for 6 days in a week, with Sundays off. Workers also got 7 days' casual leave. Model or good workers could live in sanatorium in the mill itself for 15 days to one month. I also had the occasion to visit the famous Summer Palace in Peking; and I saw a portion of the Palace converted into a sort of residential club where workers from factories come and live for some time to take rest and build their health. In the Western Hill Village, near Peking, I found that members of the Agricultural Procedures' Co-operative Society worked for nine hours a day but I was told that this would be reduced when winter sets in because the days would then be shorter. Indeed, so particular are the people about rest pauses that they strictly follow the procedure even in remote and outlying places. For instance, when I was going from Peking to see the Great Wall of China by motor car, I passed through very sparsely populated regions. In one part, some road repairers were repairing the road. Suddenly all of them stopped working and sat down to take rest. I was told that they take rest for a few minutes after continuous work for a couple of hours or thereabouts.

The government has provided 155 workers' sanatoria, rest homes, spas, treatment and recreation centres and T.B. sanatoria which are run by Trade Unions. There are 1,000 off-duty rest homes and sanatoria attached to factories and enterprises. All beauty spots and places of good climate can be visited by workers and adequate arrangement has been made for their board and lodging.¹³

3. *Right to Material Assistance in Old Age, Sickness and Disability*.¹⁴ To guarantee this right, the state provides social insurance, social assistance and public health services and gradually expands these facilities.

Labour Insurance Regulations were passed in China as early as in 1951, which provide free medical treatment and financial help in cases of sickness, invalidity, maternity, employment injuries and old age. Employer pays the entire amount of contribution, and trade unions have been entrusted with the administration of the insurance system. Besides, the trade unions also provide rest and vacation facilities, run sanatoria and organize Old Workers' House. The latter is a wonderful institution and is very well run. I visited the Old Workers' Home in Shen'ang (*i.e.*, Mukden) which

¹³ Wu Chia lin, *Op. Cit.*, pp. 4-5

¹⁴ *Constitution*, Article 93

accommodates retired workers without families. It provides to the inmates excellent club life, besides board and lodging. The inmates are free to decorate their rooms according to their liking and pursue their hobbies in peace and comfort according to the energy left in their bodies. Some of them feed birds, others go for fishing and still others just bask in the sun on the lawns. This house is full of most beautiful flowers and plants, and there is a varied collection of cactus which I greatly liked. Old people there also play different type of indoor games, or practise music and engage in other forms of light recreation. Many of them are illiterate and uneducated; and the Director of this home comes to them every morning to read to them daily newspapers and to post them with current developments of common interest; and he also reads interesting books to them. I found the whole building very neat and clean and the inmates happy.

4. *Right to Education.*¹⁵ Citizens also have right to education. For this purpose, the state establishes and gradually extends the various types of schools and other cultural and educational institutions.

The number of educational institutions in

¹⁵ *Constitution*, Article 51.

working in any organ of state for transgression of law or neglect of duty is enjoyed by all citizens in China. Citizens can make a complaint orally or in writing to any organ of the state at any level; these complaints are seriously looked into and promptly dealt with; and those who make complaints are not victimised. People suffering by reason of infringement of persons working in organs of state of their rights as citizens have the right to compensation. Throughout China there are small meetings held where students and teachers, officers and subordinates, foremen and workers, employers and employees sit together and discuss cordially and constructively each other's shortcomings and offer criticism. A very important method of improving people is criticism and self-criticism.

§ 3. FREEDOMS GUARANTEED BY THE CONSTITUTION

The Constitution also guarantees a number of freedoms to citizens, which are discussed below :

1. *Freedom of Speech.* According to the Constitution, not only is freedom of speech guaranteed, but the state provides the necessary material facilities also.¹⁶

¹⁶ "Citizens of the People's Republic of China enjoy freedom of speech, freedom of the press, freedom of assembly, freedom of association, freedom of procession and freedom of demonstration. The state guarantees to citizens enjoyment of these freedoms by providing the necessary material facilities."—*Constitution*, Article 87.

huge works being built up fast with the help given by the Soviet Union, and it was expected that as a normal human being he would learn from criticism also. But he was not forced to adopt communism or was not in any other way handicapped. (c) Those who offer criticism and suggestion are encouraged to do so and are in no way victimised. If any officer or person adopts an incorrect attitude towards critics, it is supposed to be a very shameful thing; and persistence of such an attitude is punished. (d) Counter-revolutionaries are not tolerated in China; and if an intellectual is counter-revolutionary, he would not be treated with the patience and courtesy which an intellectual with bourgeois outlook would be. (e) Any attack on Constitution or any act against it would also not be tolerated. There are freedoms and there are rights of a very substantial degree, but they are there within the framework of the Constitution. If a person attempts to wreck the Constitution or act against it, he would be severely punished, because the Constitution in China is real and living thing and it is the symbol and means of unity of the people. At the same time, constructive criticism with a view to improve things would be welcomed. (f) Opportunity is given to all to discuss a proposed measure; and every opinion is heeded and seriously consi-

dered. But once a decision is taken, everybody is expected to abide by it.

On the basis of these facts I believe it would be safe to conclude that there is a large measure of freedom of speech and opinion in China within the framework of the Constitution; and similar freedom with reference to the Constitution itself is not allowed unless it is of a constructive, and not of destructive, character.

2. *Freedom of Press* is also guaranteed by the constitution. Newspapers are published by the state and anybody can express any opinion criticising any officer who is negligent in his duties or who has transgressed law. They also point out shortcomings and make suggestions. Moreover, the state supplies paper, printing facilities and other resources to the people's organizations for their own publications. "Almost every issue of every newspaper contains exposures often based on readers' letters of the shortcomings of officials in the performance of their duties, and suggestions for improvements in various spheres. Persons in authority who suppress criticism, or do not heed it when just, are subject to disciplinary action or even punishment."¹⁷

¹⁷ Li Hao-pei, *Citizens' Rights and Duties*, "China Reconstructs", Peking, April 1955, p. 3.

3. *Freedom of Assembly.* Citizens are free to assemble for political and other purposes. Halls and meeting places have been provided by the state for the purpose.

4. *Freedom of Association* has been guaranteed by the Constitution. Trade Unions, which were illegal, before 1949, have now been assigned a definite role in social scheme of things and their membership today exceeds ten million. There are national and local organization of peasants, women, students, writers, artists, scientists, technicians, businessmen and industrialists. They are furnished with buildings of suitable nature by the state which gives them other things and facilities asked for.

5. *Freedom of procession and demonstration* have also been guaranteed by the Constitution.

6. *Freedom of Religious Belief.* Freedom of religious beliefs is also guaranteed by the Constitution.¹⁸ The government is spending generously on the repair and preservation of religious buildings. I saw an ancient Buddhist Temple in Hangchow, which was originally constructed by an Indian Bhikshu about 1,500 years ago and which was being repaired on a lavish scale. Similarly a pagoda in Nanking, which had fallen

¹⁸ Constitution, Article 88.

down, has been completely rebuilt. I visited Buddhist Temple in Shanghai, which was very neatly kept and was equipped with modern conveniences. The conditions of mosques and churches is also the same. There are priests, moulvies and clergymen there; but we were told that few visitors go to these religious places.

7. *Freedom of the Person of Citizens.* Freedom of the person of citizens is inviolable in China.¹⁹ No citizen may be arrested except by decision of a court or with the sanction of a procurator. The procedure for arrest and detention has been prescribed and widely circulated among public so that they may know their rights.

8. *Freedom of Home, Correspondence and Residence.* The Constitution says that (a) the home of citizens of the People's Republic of China are inviolable, (b) privacy of correspondence is protected by law, and (c) citizens enjoy freedom of residence and freedom to change their residence.²⁰

9. *Freedom to Engage in Research or Cultural Pursuits.* The government in China "safeguards the freedom of citizens to engage in scientific research, literary and artistic creation and other

¹⁹ *Ibid*, Article 89.

²⁰ *Constitution*, Article 90,

put in their day's work or slacking on their job. This in China is regarded as shameful or disgraceful; and it is a violation of citizen's duty to the country. Discipline is maintained through persuasion, education, criticism and self-criticism. Legal penalties can also be applied against wilful slackers.

Social ethics is also highly developed in China. The roads of Peking, which at one time were very dirty and full of stray rubbish, are today absolutely neat and clean and cigarette ends or even pieces of paper are not seen lying about; and there is no constable or anybody else to compel people to be careful in this direction. Shanghai, which has a population of 70 lacs, has very clean and tidy streets. In Nanking, however, I found some of the minor streets not altogether clean and there were pieces of papers and some litter scattered here and there; though they were much cleaner than average streets in Indian cities for instance. Lavatories in China are, however, generally dirty and foul smelling. The lavatories in Lung fu-tsze market in Peking were awful; and those near Ching Tombs or in Lake Area in Nanking were only slightly better. Those in some of the Universities were also pretty bad. However, in many Universities,

they were in very good condition, and in all the hotels where we stayed in Peking, Mukden, Nanking Shanghai, Hangchow and Canton, they were excellent, and in the railway train also they were very neat and clean and were cleaned after every few hours. In some of the villages there still existed some ditches where dirty water had collected. We were really astonished to find some members of the audience in opera houses spitting inside the buildings with apparent unconcern, and I think it is a habit which has not entirely been overcome. On the whole, however, social ethics is more developed in China than in some of the other countries of the world.

2 Every citizen in China has the duty to *respect and protect public property*.²³ Public property is fast increasing in quantity all over China, because instruments of production are being increasingly owned by the state. People know that since they are the masters of the state, public property is their collective property, and at the same time they feel that it is this property which is the source of their welfare and the foundation of future socialist construction and expansion. They have, therefore, great concern for the safety of public property.

3. Every citizen has also the duty to *pay taxes* according to law.²⁴ There are very few taxes in China. Peasants have to pay only one tax, *viz.*, Agricultural Tax which comes to about 10% to 30% of the total output. This tax is fixed at one stage, and is not then increased with an increase in agricultural output so that incentive to expand production is preserved. Reductions in tax are made in times of natural calamity; and if the output is lower than 165 lbs of grain for each family for any reason, no tax is collected. Workers, *i.e.*, wage-earners, do not pay any taxes. Industrial and commercial enterprises pay taxes varying between 5% and 30% of profit. Taxes on many commodities have now been abolished. We were told that the taxes are promptly paid by the people concerned.

4. Citizens of China have the duty to *defend homeland and to perform military service* according to law. Till 1954 People's Republic Liberation Army was composed of volunteers; and it was considered to be an honour to be a soldier in that Army. Soldiers were, and are, widely respected in China. But now military service has become a duty.

²⁴ *Ibid*, Article 102.

X

GOVERNMENT OF SHANGHAI MUNICIPAL CORPORATION

Shanghai is the biggest municipality in China, which is directly under the central authority and has a population of approximately 70 lacs. Mr. Liu Chih-ping, the Vice-Mayor of Shanghai Municipal Corporation, gave a reception to the Indian Universities' Delegation that visited China in September-November, 1955, in the Shanghai Culture Club on 25th October, 1955. He was also good enough to explain, clearly and patiently, the manner in which Shanghai is governed. The political situation in Shanghai since 1949 throws a flood of light on, and illustrates, the political situation in China as a whole. ✓

The day when Shanghai was liberated, democracy was adopted according to practical conditions then obtaining. At that time conditions were not favourable to the holding of elections for the Shanghai Municipal People's Congress. Hence a meeting of the representatives of the various circles in the public life and various strata of society of Shanghai was convened; and they together

formed the People's Congress of Shanghai. In this way, from the very start, effort was made to rely on the masses, establish close contacts with them, and seek their real co-operation. This arrangement of deciding upon people's representatives was not perfect because direct election by the people is the ideal. But the latter could only be practised when more stable conditions were established.

The People's Congress of Shanghai elected the People's Political Consultative Conference of Shanghai. This Conference discussed national questions of various types when the Congress was not in session. Questions of all sorts were constantly examined here; and when solutions were found out, they were carried out by the Government of Shanghai.

In 1953, however, conditions in China became stable, and the Central People's Government Council asked the Shanghai Municipal Corporation to hold general elections. Elections were thereupon held on the basis of universal franchise; and each municipal district was taken as a basic unit. Deputies were first elected by the people for the People's Congress of each Municipal District; and the deputies so elected at various district levels elected deputies for the People's Congress of the city. This City People's Congress elected Mayor,

Vice-Mayor and other members of the People's Council of Shanghai, which is the Government of Shanghai

Election of the Deputies

The first thing that the Election Committee of Shanghai did was to hold a meeting of the Communist Party, other democratic parties and various people's organizations to discuss the principles on which candidates were to be nominated. The following three principles were finally fixed:

- (a) The deputies should be able to satisfy the wishes of the people as a whole
- (b) Particular features of each municipal district should be considered. For instance, if a municipal district is highly industrialised, this feature should be taken into account in making nominations. Fudan district has a University and many colleges, and this situation was taken into account in nominating deputies from this district
- (c) There should be proper representation from different strata of the people

These principles were reached in the following manner. The Election Committee drafted certain principles, and then sent them out to the basic

electoral units, *i.e.* municipal districts, so that all the electors and political and people's organizations could express their opinions thereon. They were discussed by the people who examined which of the principles were just and which unjust and why. Their opinions were collected and sent to the Election Committee. The latter examined all the suggestions made by the people, and finally laid down the three principles given above.

The importance of the third principle, *viz.*, that there should be proper representation from different strata of the people, is very great; for if there is no principle like that, the people would elect only the members of the Communist Party of China as deputies. Therefore the Communist Party itself takes the initiative and puts a limit to the number of their candidates to be nominated. This makes it possible for other elements of population to be represented. Special attention was paid in the last election in Shanghai to the following sections: (a) *Women*. Though the status of women has improved since Liberation, it was felt necessary to pay special attention to them; and hence this was made a general principle in making nominations, though the number of women deputies was not formally fixed. (b) *National Bourgeoisie*. Similarly

need was felt for giving due representation to national bourgeoisie. As they are small in number, very few deputies of their class could be sent up if free elections were held. Hence a principle was made that an adequate number of deputies should be sent up from their rank. (c) *Minority Nationalities*. They also deserved special attention because their members are very few in Shanghai. Hence they could not possibly get elected in straight elections. (d) *Religious Groups*. They are in similar situation. They are also few in number and need was felt of their deputies being present in the Congress to take care of their interests.

The situation, therefore, is that the Communist Party of China is so strongly entrenched in the country that it can have everything its own way if it so likes. But it does not do that. It is anxious to seek and obtain the co-operation of democratic elements in national life and the various people's organizations, and, therefore, it gets their representatives elected to the various Congresses and regularly consults them, heeds their opinion, and generally carries them with itself. Likewise close contacts are constantly maintained with the masses of the people and they are consulted whenever necessary and their criticism and suggestions are welcomed. If the Communist Party of China

wants to impose its dictatorship, it can do so without any difficulty. But it considers that to be bad in principle and very wrong from a long-range point of view. It firmly believes that people are the real masters of China; and, therefore, while it provides leadership to them, it makes constant endeavour to make them politically enlightened, to consult their wishes and to work for their welfare.

After the above-mentioned principles were fixed, they were sent out to the basic units of election so that candidates may be nominated in accordance therewith. People themselves thought out the qualities which a nominated candidate should possess in order to be able to satisfy their wishes and which would specially be fit him to look after the specific needs and interests of the district concerned. But the nomination was not an easy affair, because there were great arguments and debates. No doubt they proceeded according to the previously agreed principles, but in actual nomination of candidates, there was scope for a great deal of discussion, and final nominations took time. Different candidates were compared, and their merits and demerits were thoroughly discussed. Investigations were also made into the merits and demerits of the candidates; and sometimes the

candidate himself was invited to participate in the discussions that were held. Often an otherwise satisfactory candidate was nominated on a promise made by him that he would try to overcome his shortcoming that was pointed out to him.

A list of nominees was in this manner prepared in each district; and all the district lists were sent over to the City Election Committee. The latter then worked out a complete list of all the nominees taking into consideration the needs of the city as a whole. The list prepared by the City Election Committee for each district was not necessarily the same as the list originally sent over by the district concerned as the City Election Committee had to consider the needs of the whole city. The draft list prepared by the City Election Committee was then submitted to the District Election Committees. The latter could make changes in the draft if they thought it necessary; and could even incorporate fresh names in the list at this stage. The district lists were once again transmitted to the City Election Committee which published the final list.

Then elections were carried out. Electors had the right to cast votes for the candidates included in the published list or for candidates outside the published list. There was secret ballot and there

was absolutely no interference with voters. Any such interference is punishable in China by law. The principle of contested elections (*i.e.*, the system where there are many candidates for each seat) is not applied in China; on the contrary, the number of nominated candidates is equal to the number of deputies to be elected.

This system of nominated elections is regarded by people in China to be much superior to the system of contested elections. They believe that they have real freedom in deciding the names of the candidates; and at the same time the right people get elected. It is they who send the original list of names; and then they can include fresh names when they receive the draft from the City Election Committee. Even in final elections, they can vote for people outside the list, though in practice this does not usually happen. Vice-Mayor Liu was emphatic in his statement that elections in the United States of America were merely formalistic whereas there was real democracy in China. Americans, according to him, do not allow people's merits and demerits to be freely considered; and there is no guarantee that the elected persons were the best persons or would really work for the welfare of the people. During the regime of Kuomintang in China, posters were put up in

public places offering to purchase votes at a declared rate like 100 Juans per vote; but this could never give real democracy to China. Hence Chinese people do not believe in blind choice and consider it necessary and useful to nominate candidates after a careful examination of their respective merits and demerits.

Shanghai Committee of Chinese People's Political Consultative Conference

This Committee has 270 representatives. They are not elected on the basis of universal franchise but represent the various political parties, people's organizations and other persons of the city of Shanghai. This Committee is not an organ of state or administrative authority, but it is a very important organ in the political life of the city because it is here that consultations are held and agreements reached on important matters among people of different denominations living in Shanghai. It is essential to carefully listen and consider the different points of view which different classes of people are likely to have, with a view to make the people of the various strata and shades of opinion agree on main problems. This is the work of the Shanghai Committee of the CPPCC. Important suggestions of Shanghai People's Congress are discussed here. At these discussions every-

body puts forward his point of view, and many arguments are given and suggestions made. The results of these deliberations are transmitted to Shanghai People's Congress for its consideration. The Shanghai Committee of the Chinese People's Political Consultative Conference has played a very important role in formulating correct policies and in forging unity of purpose and action.

The People's Congress of Shanghai examines the results of the deliberations of the Shanghai Committee of the CPPCC very seriously and dispassionately. Every deputy tries to take into account the interests of the section of the people he represents as also those of the people as a whole; and the opinions of the Shanghai Committee of the CPPCC help him to eschew narrowness and reach decisions which are for the good of each and all. Vice-Mayor Liu observed: "If everybody is selfish, we cannot work together. To those who are not used to it, it may appear to be surprising. But we have unanimity not by force but by reasoning".

Visits of People and Their Letters of Criticism

Citizens of Shanghai are encouraged to visit offices, schools, factories and other institutions, offer their criticism and suggestions, and write

letters about them. In all offices of Government and in every state enterprise, in every school and in every factory, it is a principle that special attention must be paid to visitors and the letters received from the people. The Shanghai Municipal People's Council has special department for this purpose which is manned by twenty persons. They receive visitors and discuss with them the various issues that they raise and receive their criticism and suggestions. They also study and deal with the letters containing criticism and suggestions. The letters and discussions have a great variety of contents ; and liberally avail of these facilities. They make proposals on matters big and small; they criticise and suggest improvement in all aspects of work; they express their own wishes and desires. This is considered to be a very good way of establishing close and intimate contacts with the people and getting to know as to what exactly they want. There are many visitors to this Department every day, while it deals with hundreds of letters.

This system is universal in China and the Government has issued special instructions on this subject, which no office can violate. Every visitor must be paid due attention and treated with courtesy ; and every letter must be replied to. If an

officer does not adopt a serious attitude towards a visitor or in dealing with a letter, he is criticised for this; and serious lapses are suitably dealt with. The officers must not only not take a formalistic bureaucratic attitude but they must also deal with the matter seriously. Suggestions made by the people must be transferred to the organs concerned and must be practised if they are reasonable and useful. If it is not possible to put them into practice, a letter must be written to the author explaining reasons. If criticism is correct, necessary action must be taken. Thus the supervision by the people on the working of the government is very real in China, and the government officers receive very great help from the people in this way. Government functionaries are, as a rule, very conscious of the importance of this system and carry it out faithfully; but a small number of them does not always adopt a correct attitude and is punished for it.

Criticism and Self-Criticism

Besides this, there is a process of criticism and self-criticism that is practised within the Government organizations themselves. It is believed in China that it is possible for everybody to make mistakes and have shortcomings. If these mistakes

and shortcomings are allowed to remain undetected or grow, they would harm the individual as well as the people because an individual with shortcomings and defects cannot work very well. At the same time, shortcomings cannot be removed by one stroke of pen. We must constantly try to remove them just as we remove dust from our faces every day. Hence it is necessary to develop patiently the habit of criticism and self-criticism. If a man cannot make self-criticism or is averse to criticism and has no desire to improve himself, or takes revenge on his critics, it is considered to be a very shameful thing.

XI

JUSTICE IN MODERN CHINA

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Basic Ideas of Justice and of Individual Liberty.

In order to appreciate the judicial system of China, it is necessary to bear in mind certain basic ideas upon which the fabric of modern Chinese Constitution is built. The People's Republic of China was founded in the year 1949 after more than a century of heroic struggle against Imperialism, Feudalism and Bureaucratic Capitalism, led by the Communist Party of China. They adopted their Constitution on September 20, 1954. The chinese people have adopted a People's Dictatorship. The aim of state policy is the attainment of socialistic society, led by the working class and based on the alliance of workers and peasants. All power in the People's Republic of China is concentrated in the hands the representatives of the people. The organs through which the people exercise supreme power are the National People's Congress at the top and the Local People's Congresses in the provinces, autonomous regions and municipalities.

There is no separation of the legislative, executive and judicial powers as in the Anglo-Saxon system. The National People's Congress and its Standing Committee are not only the supreme legislative organs of the State like our Parliament but also appoint the National Executive which is called the State Council and supervise the work of the judiciary and has the final voice in interpreting the laws. In other words, the People's Congress and its standing committee are the supreme authorities in all matters legislative, executive and judicial.

The Chinese Constitution frankly aims at the people's dictatorship and does not conceive that the representatives of the people can be capable of doing injustice to individuals. Thus the Chinese concept of justice differs from the notions which are ingrained in our system of justice, namely independence of Judges from Government and from political control as a vital safeguard of the liberty of the citizen. The Chinese concept is that the Government is the people, and the people do not need to be protected from themselves.

What the individual loses in this respect, he gains by the protection he is afforded by the Public Procuratorate office. This is something new

which does not find place in the Anglo-Saxon Constitutions. We shall describe it later.

The Judicial System. The structure of the judicial system in modern China is as follows. At the top is the Supreme People's Court. This is like our Supreme Court. At provincial level there are the High Courts which are People's Courts. At the next lower level, *i.e.*, at the county or autonomous Chou level, are the intermediate courts; and below them are the primary courts. The courts are all people's courts. There are also Special People's Courts. The President of the Supreme People's Court is elected by the National People's Congress and can be removed by it or by its Standing Committee. Presidents of People's Courts are elected by the Local People's Congresses at corresponding level. The term of office of the President of the Supreme Court and of the Local People's Court is four years. In this it differs from our system where judges are permanent till they attain the age of retirement and are appointed and not elected.

The Supreme People's Court supervises the judicial work of Local People's Courts and Special People's Courts. It is responsible to the National People's Congress. Local People's Courts at

higher levels supervise the judicial work of Local People's Courts at lower levels. They are all responsible to the Local People's Congress at corresponding levels and report to them.

Judges of the Supreme Court can be removed by the Standing Committee of the National People's Congress though the President of the Supreme People's Court can be removed only by the National Congress. Local People's Courts are responsible to Local People's Congresses and are presumably elected and removed by them.

Laws. In the revolution of 1949, the Chinese people broke their links with the past. They scrapped away the legal profession, dismissed most of the existing judges and repudiated the old legal courts. They have been working on a civil and penal code. They have succeeded in drafting a penal code which will perhaps be the Law of China in a year or two but the civil code is yet to be compiled. As an aftermath of the revolution when the old order was scrapped, mass trials and denunciations were the order of the day. But during the last 7 years the Chinese have established a powerful state machine whose writ runs throughout China, and now due attention is given to the rights of the citizen and regular trials are held.

Trials and Courts Procedure. One peculiarity of the Chinese judicial system is the creation of the People's Procuratorates. These Procuratorates have the duty to enforce the law in the courts. They have also the duty of seeing that every department of the state, both national and local, both police and public security, acts according to law. Every arrest must be reported to it within 24 ^{hours} years. This is an important provision and safeguards the liberty of the citizens to a great extent. Mr. Khrushchev in his recent denunciations of Stalin pointed out that the absence of this control in Russia was one of the factors which made possible cruel denial of justice there. According to the Constitution, the Supreme People's Procuratorate exercises procuratorial authority over all departments of the State Council, all local organs of state, persons working in organs of state, and citizens and thus ensures the observance of the law. The Chief Procurator of the Supreme People's Procuratorate is elected by the National People's Congress and can be removed from office by it. The term of his office is 4 years. Local and special people's procuratorates exercise procuratorial authority within the limits prescribed by law. They work under the leadership of the people's procu-

ratorates at higher levels, and all work under the co-ordinating direction of the Supreme People's Procuratorate. In the exercise of their authority, local organs of the people's procuratorate are independent and are not subject to interference by local organs of state. ✓

The Chinese citizen does not, however, enjoy the right of habeas corpus as is known to us, *i.e.*, of moving the High Court and the Supreme Court for relief against unlawful arrest. Article 89 of the Chinese Constitution no doubt provides that the freedom of the citizen of the Republic of China is inviolable. But it is inviolable only against executive authority and not against the decision of the People's Court or of the People's Procuratorate. If the People's Procuratorate does not afford him protection, he has no remedy against unlawful detention. ✓

Only one appeal is allowed in China. Trials begin mostly at the lowest level, *i.e.*, the primary people's courts, but for more serious offences they may begin at the Intermediate People's Courts or at the High Courts. At the first trial assessors are associated with the court. These assessors are elected from among the population and any one who has a right to vote and stand for election and has

attained the age of 23 can be chosen as an assessor. This enables the people at large to take part and supervise the judicial work of the court. Cases are heard in public unless otherwise provided by law and the accused has a right to defend himself by a lawyer or any other agent. There is no system of trial by jury in China. Practising lawyers are very few now. In Peking, for instance, it is reported that while in 1949 there were 250 practising lawyers but now there are only 20.

Citizens of all nationalities have the right to use their own spoken and written languages in court proceedings. The people's courts are to provide interpretation for any party unacquainted with the spoken or written language commonly used in the locality. In an area entirely or largely inhabited by a national minority or where the number of nationalities live together, hearings in people's courts are conducted in the language commonly used in the locality and judgments, notices and all other documents of the people's courts are made public in such language.

The trials are conducted with dignity and simplicity though without wigs or robes. Accused are not kept under arrest for long before they are put up for trial. The moral standard of the Chinese

has tremendously improved. Crime is on the decrease. Chinese prisons are crammed not with prisoners of the ordinary type but with political offenders.

Prison Reform. The Chinese do not believe in the Anglo-Saxon system of incarceration of a criminal in jail. They believe in the reform of the prisoner by hard physical work and teaching him a trade or what the Chinese call "re-education". Prisons are indeed so many factories of various kinds—stocking factory, brickwork factory and so on. Though prisoners get no regular wages, they get financial rewards and remissions of their sentence for good work and behaviour.

Conclusion. Justice in China is speedier and cheaper. There are no delays. There are no second appeals or third appeals or writ petitions, and except in political matters justice seems to be impartial. The Anglo-Saxon system of justice is designed to ensure even political justice for which there does not seem to be any scope in China.
